IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5477 of 2004

Sukhamani Juhu Himalaya Co.op.
Housing Society Ltd. .. Petitioner

versus

M.L. Peshwani & Ors. .. Respondents

...

Mr.P.N. Joshi for the petitoner.

Ms.Manisha Vivkhare i/b Bhavesh Parmar for respondent no.1.

CORAM : D.G. KARNIK, J

DATED : 23rd April 2007.

P.C.:

1. Rule returnable forthwith.

2. In view of the order of this court dated 6th July 2004 directing that the matter would be disposed of at the stage of admission, and by consent the petition is heard forthwith.

3. Issuance of Rule to respondent nos.2 to 4 is dispensed with as they are formal parties.

4. Petitioner is a Co-operative Housing Society. One Mr.Madhok was a member to whom a flat bearing no. B-4 (hereinafter referred to as "the said flat") in the petitioner society was allotted. According to the respondent, by an agreement dated 1st December 1994, the original member Mr.Madhok agreed to sell the said flat to the respondent no.1, and also executed a Power of Attorney in his favour. In pursuance of an agreement to purchase, the respondent no.1 applied to the petitioner society for transfer of membership. The application of respondent no.1 for membership was considered by the Society in its meeting held on 30th July 2000. In the said meeting, it was resolved to reject the application of the respondent no.1 for membership and communicate the same to the respondent no.1. Accordingly by a letter dated 2nd July 2000, the petitioner informed to the respondent no.1 that his application for membership was rejected for the reasons mentioned in the said letter. In particular, the letter mentioned that the general power of

attorney was not in order as it was not properly stamped and was written on stamp paper of Rs.50/- instead of Rs.100/- as required by law. A more substantial reason for the rejection was that the application was not in the form prescribed. Two other reasons for rejection as mentioned in the letter were that entrance fee of Rs.10/- for membership as also the transfer fee of Rs.15,000/- payable as per the bye-laws of the society was not paid. The letter stated that the respondent no.1 may apply again after complying with the requirements pointed out. Instead of rectifying the defects, the respondent no.1 chose to file an appeal before the District Deputy Registrar of Co-operative Societies under section 23 of the Maharashtra Co-operative Societies Act 1960. By the impugned order dated 7th November 2001, the District Dy. Registrar allowed the appeal of the respondent and directed the petitioner society to admit the respondent no.1 as a member of the society.

5. Learned counsel for the petitioner submitted that the petitioner society had rejected the membership of the respondent no.1 in view of the fact that he had not made the application in the

prescribed form nor paid the arrears in respect of the flat nor paid entrance fee nor the transfer fee. He also submitted that the power of attorney was not properly stamped and therefore, there was no valid consent given by the original member for transfer. The consent given by the attorney of the original owner on the basis of the power of attorney was not proper as the power of attorney was insufficiently stamped.

6. I have perused the impugned order dated 7th November 2001. The District Dy. Registrar has not given any valid reasons for his order. The order consists of three parts. In the first part, the District Dy. Registrar has extracted the contentions of the petitioner. In the second part, he extracted the contentions of the respondent no.1 and by the third part, he has given his decision without any reasons. In paragraph no.4 of the final part of the order, the District Dy. Registrar has observed that the respondent no.1 would pay the arrears and the transfer fee but on that ground, the application should not have been rejected. In paragraph no.5, he has noted that there were irregularities in the application of respondent no.1 but those could be got

corrected.

7. It may be noted at this stage that the petitioner society has not irrevocably rejected the application of the respondent no.1. By the letter dated 2nd August 2000, the petitioner society pointed out the defects in the application of the respondent no.1 and stated that the respondent no.1 might remove the said defects and apply again. Learned counsel for the petitioner stated that if the respondent no.1 removes all defects and applies again, the application would be considered by the petitioner society on its own merits.

8. There appears to be no dispute between the parties that the application was not fully in order and was defective. In fact, the District Dy. Registrar has also noted that the application was defective but has stated that the defects could be got cured by the petitioner society. In fact that exactly what the letter of the society stated. It called upon respondent no.1 to cure the defects and apply again. In the circumstances, the action of the petitioner society was proper and could not be faulted. It appears that the original

member-transferor was in arrears. The arrears were not paid and even the transfer fee was not paid. The petitioner was right in contending that the payment should be made first before accepting the respondent no.1 as a member. In the circumstances, the District Dy. Registrar clearly erred in directing that the respondent no.1 should be admitted as a member on the basis of the defective application without compliance.

9. The order dated 7th November 2001 was challenged by the petitioner in revision before the Divisional Joint Registrar who confirmed the same. I have already noted that the original order of District Dy. Registrar was contrary to law and is therefore liable to be set aside. Divisional Joint Registrar could not have confirmed the same. The order of the Divisional Joint Registrar dated 3rd March 2004 confirming the order of the District Dy. Registrar is also therefore liable to be set aside.

10. In the circumstances, Writ Petition is allowed and the impugned orders are set aside.

11. It is clarified that the respondent no.1 is

entitled to apply afresh for membership. If such an application is made the petitioner shall consider the application in accordance with law.

(D.G. KARNIK, J)